IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-8622

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIA TERESA MARRUFO,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(EP-93-CR-136)

(April 13, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

Maria Teresa Marrufo was convicted of importation of marijuana in violation of 18 U.S.C. §§ 952(a), 960(a)(1) and of possession with intent to distribute marijuana in violation of 21 U.S.C. § 841(a)(1). Marrufo appeals. We affirm.

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

On the morning of March 24, 1993, Marrufo entered the United States from Mexico at a port of entry in El Paso, Texas; she was driving a Mazda RX-7. United States Customs Inspector Elias Vigil was stationed at the primary inspection station that Marrufo drove up to. Vigil questioned Marrufo concerning her citizenship and whether she was bringing anything from Mexico into the United States. Marrufo handed the agent her resident alien card, and told him that she was not bringing anything from Mexico into the United States.

Vigil testified that Marrufo was nervous, and that she did not make eye contact with him as he was talking to her. Vigil then ran a computer check on the license plate number of Marrufo's vehicle, and he received a "hit" notifying him to refer the vehicle to secondary inspection, which he did. A "hit" means that someone has placed information into the computer system informing an agent to be aware of certain things with regard to a vehicle.

At secondary inspection, United States Customs Inspectors Fernado Castro and Cruz Estrada continued the investigation of Marrufo. Marrufo told the inspectors that she was presently living in Vista, California, and was coming from Juarez, Mexico, where she had been visiting friends for a few days. She stated that she was presently on her way to an auto parts store in El Paso.

Inspector Estrada also ran a check on Marrufo's license plate number. From his computer check, Estrada learned that Marrufo's vehicle had a factory built hidden compartment and that a narcotics dog had previously alerted positively on the vehicle's hidden compartment where marijuana residue was ultimately found. Estrada and Castro then searched Marrufo's vehicle.

Because the screws securing the hidden compartment appeared shiny, the inspectors determined that the hidden compartment had recently been tampered with. After uncovering the hidden compartment, the inspectors discovered eighteen bundles of marijuana. Marrufo was arrested.

Marrufo was charged with importation of marijuana and with possession with the intent to distribute marijuana. She was convicted on both counts. The district court sentenced Marrufo to twenty-seven months on both counts to run concurrently and three years of supervised release on each count to run concurrently.

II.

Insufficiency of the evidence

Marrufo asserts that there was insufficient evidence to support her conviction for possession with the intent to distribute marijuana. We review the district court's denial of a motion for judgment for acquittal de novo. United States v. Restrepo, 994 F.2d 173, 182 (5th Cir. 1993). The well-established standard in this circuit for reviewing a conviction

allegedly based on insufficient evidence is whether a reasonable jury could find that the evidence establishes the guilt of the defendant beyond a reasonable doubt. Id. We view the evidence in the light most favorable to the government to determine whether the government proved all elements of the crimes alleged beyond a reasonable doubt. United States v. Skillern, 947 F.2d 1268, 1273 (5th Cir. 1991), cert. denied, 112 S. Ct. 1509 (1992). Furthermore, the evidence does not have to exclude every reasonable hypothesis of innocence. United States v. Leed, 981 F.2d 202, 205 (5th Cir.), cert. denied, 113 S. Ct. 2971 (1993).

To convict Marrufo of possession of marijuana with the intent to distribute, the government must prove that she knowingly possessed marijuana with the intent to distribute. United States v. Munoz, 957 F.2d 171, 174 (5th Cir.), cert. denied, 113 S. Ct. 332 (1992). "Proof of intent to distribute may be inferred from the presence of distribution paraphernalia, large quantities of cash, or the value and quality of the substance." Id. "Possession . . . may be actual or constructive. Ownership, dominion, or control over the contraband, or over the vehicle in which it is concealed, constitutes constructive possession." United States v. Shabazz, 993 F.2d 431, 441 (5th Cir. 1993). However, if the "illegal substance is contained in a hidden compartment in the vehicle, we may also require circumstantial evidence that is suspicious in nature or demonstrates guilty knowledge." Id. Circumstantial evidence which tends to prove guilty knowledge includes

nervousness, conflicting statements to law enforcement officials, and an implausible story. United States v. Daiz-Carreon, 915 F.2d 951 (5th Cir. 1990).

We conclude that there was sufficient evidence for a rational juror to conclude that Marrufo was guilty beyond a reasonable doubt of possession with the intent to distribute marijuana. The government introduced evidence that sixty-five pounds of marijuana was found in Marrufo's car. Further, the government introduced evidence that the marijuana found in Marrufo's vehicle had a street value of between $22,000 and $70,000 and that sixty-five pounds was an amount of marijuana inconsistent with personal use and consistent with distribution. See United States v. White, 972 F.2d 590, 597 (5th Cir. 1992) (noting that the sheer volume of cocaine involved supported the inference that the defendants intended to distribute drugs), cert. denied, 113 S. Ct. 1651 (1993).

Marrufo's testimony regarding her reason for traveling from Mexico into El Paso supported the inference that she knew about the marijuana. At trial, Marrufo testified that she had left California to visit her brother in Rodeo, Durango. She testified that she had stopped in Juarez and stayed with a friend. She did not immediately continue her trip to her brothers because her car was leaking oil. She went to three mechanics in Mexico and was not able to get her car fixed because they either did not have the time or the part that was needed to repair the oil leak. One of the mechanics told her that all she needed was a gasket and

that she should go to El Paso to pick one up. When she was arrested in El Paso, she had only fifty or fifty-five dollars with her, but she stated that she had left $300 to $500 in Juarez. She stated that she brought only fifty dollars with her because that was what she had been told the part would cost. A jury could certainly have found her story that she would spend a whole day in Mexico unsuccessfully getting her car repaired, travel to El Paso to buy the necessary part, and then leave most of her money in Juarez at least suspicious. Further, there was testimony from one of the customs officials that the amount of money which Marrufo had with her was insufficient to buy a part to fix an oil leak in the type of vehicle that Marrufo had. Moreover, she stated that when she first arrived at the inspection station her car was overheating and smoking. However, the customs officials testified that they never noticed the car overheating or an oil leak.

The jury could also have inferred that Marrufo knew about the marijuana in her vehicle because of her testimony regarding how she paid for the trip. Marrufo testified that she and her two-year-old daughter left California on March 20. She stated that she bought the vehicle approximately fifteen to twenty days before she left for $500. She testified that she had been able to save about $800 for the trip. She also testified that she purchased insurance to take the car into Mexico for about $270 to $300. However, she further testified that she was essentially unemployed from 1990 until January 1993 when she began working at

a clothing store for about a month for $180 a week. She testified that she next worked for about a month for a shampoo packing place for $177 a week. She stated that she used the money that she earned to support herself, her daughter, and to help support other members of her family. The jury could certainly have determined that it was implausible that she was able to buy a vehicle, insurance, save $800 for the trip, and pay day-to-day expenses for herself and her daughter on her stated income. The jury could rationally have inferred that she was able to pay for the trip because she had been paid to deliver the marijuana.

Furthermore, her testimony revealed that she was in control of the vehicle the entire time she was in Mexico. The government presented testimony that the marijuana appeared fresh and recently harvested, thus implicating the car's latest occupants. See Shabazz, 993 F.2d at 442 (noting that fresh nicks on the screws securing the drugs in a hidden compartment coupled with a screwdriver near the hidden compartment supported an inference that the drugs were recently secreted and thus implicating the vehicle's latest occupants).

Evidence of marijuana

Next, Marrufo argues that the trial court erred in admitting the marijuana into evidence. According to Marrufo, one of the government witnesses testified that he had to saw through one of the marijuana bundles to obtain a sample used as an exhibit at the trial. Marrufo asserts that the witness would have had to

saw through the marijuana bundle only if the bundle contained stalks of the marijuana plant, which is excluded from the definition of marijuana in 21 U.S.C. § 802(16). Thus, the real weight of the marijuana was less than sixty-five pounds.

Marrufo did not object at trial to the introduction of the marijuana. We have stated that issues raised for the first time on appeal "'are not reviewable by this court unless they involve purely legal questions and failure to consider them would result in manifest injustice.'" United States v. Gracia-Pillado, 898 F.2d 36, 39 (5th Cir. 1990) (quoting Self v. Blackburn, 751 F.2d 789, 793 (5th Cir. 1985)). Marrufo's argument that the district court improperly allowed the government to include marijuana stalks as part of the marijuana admitted into evidence does not involve a purely legal question. Therefore, we will not consider the issue on appeal.

Ineffective Assistance of Counsel

Marrufo claims that her trial counsel rendered her ineffective assistance because he failed to object to the improper weight of the marijuana, failed to object to certain testimony of inspector Evans regarding requirements to travel in Mexico and the possible causes of mechanical problems in a Mazda RX-7. "In this circuit, the general rule is that a claim of ineffective assistance of counsel cannot be resolved on direct appeal unless it has first been raised before the district court." United States v. Garza, 990 F.2d 171, 178 (5th Cir.) (quoting United States v. Kinsey, 917 F.2d 181, 182 (5th Cir.

1990)), cert. denied, 114 S. Ct. 332 (1993). An exception to this general rule is made only if the record is sufficiently developed to demonstrate that his counsel was ineffective. Id. In the present case, we do not believe that the record is sufficiently developed to allow meaningful appellate review of Marrufo's claim for ineffective assistance of counsel. See United States v. Higdon, 832 F.2d 312, 313-14 (5th Cir. 1987) (noting that review of claims of inadequate representation are rarely considered for the first time on direct appeal because there has been no opportunity for the district court to develop the merits of the allegations), cert. denied, 484 U.S. 1075 (1988). Therefore, we decline to decide this issue on appeal. Marrufo remains free to pursue her claim in accordance with 28 U.S.C. § 2255. Garza, 990 F.2d at 178.

III.

For the foregoing reasons, we AFFIRM the district court's judgment of conviction and sentence.